

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD

XPO LOGISTICS FREIGHT, INC.  
Employer

Case 13-RC-177753

and

LOCAL LODGE 701, INTERNATIONAL  
ASSOCIATION OF MACHINISTS &  
AEROSPACE WORKERS AFL-CIO  
Petitioner

ORDER

The Employer's Request for Review of the Regional Director's Decision and Certification of Representative is denied as it raises no substantial issues warranting review.<sup>1</sup>

MARK GASTON PEARCE, CHAIRMAN

PHILIP A. MISCIMARRA, MEMBER

LAUREN McFERRAN, MEMBER

Dated, Washington, D.C., November 9, 2016.

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<sup>1</sup> Member Miscimarra agrees with the Regional Director and his colleagues that none of the allegedly objectionable employee conduct in this case requires a new election under the applicable multifactor standard set forth in *Westwood Horizons Hotel*, 270 NLRB 802, 803 (1984), for determining whether third-party threats warrant setting aside an election. Although Member Miscimarra agrees with that standard, he would abandon the phrase "general atmosphere of fear and reprisal" because it improperly suggests that an election cannot be set aside unless third-party threats affected nearly all eligible voters, no matter how close the tally and how serious the misconduct. See *Mastec Direct TV*, 356 NLRB 809, 813-815 (2011) (Member Hayes, dissenting) (criticizing *Westwood Horizons Hotel* on this point). Contrary to the implication of the phrase, the Board has in fact properly set aside elections based on serious third-party misconduct affecting only a few determinative voters. See *Robert-Orr Sysco Food Services*, 338 NLRB 614 (2002); *Smithers Tire*, 308 NLRB 72 (1992); *Buedel Food Products Co.*, 300 NLRB 638 (1990); *Steak House Meat Co.*, 206 NLRB 28 (1973).